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Using The “Committee Exception” To Exclude Public Comment At Special Meeting Violates Brown Act

A recent Court of Appeal decision, *Preven v. City of Los Angeles*^[1], provides guidance on a seldom-used provision of the Brown Act found at Government Code 54954.3 (a), which allows a public agency to limit public comment on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a prior public meeting and clarifies that the so-called “committee exception”^[2] can only be applied to regular meetings.

The City of Los Angeles (“City”) utilized the committee exception to limit public comment on items that had been considered by their Planning and Land Use Management Committee (“PLUM Committee”) and then subsequently considered by the full City Council. The City’s PLUM Committee is made up of five members of the fifteen-member City Council. The PLUM Committee held a regular meeting on December 15, 2015, to address, among other things, an item that concerned a recommendation to the full City Council on a proposed real estate development near Appellant, Eric Preven’s residence (“Preven”). The PLUM Committee listened to public comment from members of the community, including Preven, and voted unanimously to make a report and recommendation of approval to the full City Council. The next day, December 16, 2015, the full City Council held a special meeting to decide whether to approve the recommendation of the Committee on the real estate development. Preven also attended the special meeting and requested an opportunity to address the City Council, including the ten Council Members who were not part of the five-member Committee. His request was denied on the grounds that he and others had the opportunity to comment on the real estate development agenda item at the Committee meeting the previous day. As such, the City asserted that under the committee exception it did not need to afford Preven another opportunity to comment on the item.

As a result of the City’s actions, Preven wrote a cease and desist demand letter to the City Clerk, indicating that the City had violated the Brown Act by preventing him from speaking at the December 16, 2015 special meeting, and that the City had engaged in similar improper conduct at subsequent special City Council meetings in May and June 2016. The City did not respond to Preven’s cease and desist letter and Preven subsequently brought petition for writ of mandate

and complaint for declaratory relief against the City for failing to comply with the Brown Act.

The Appellate Court reviewed the statutory language and legislative history of the committee exception to determine whether the exception applies to both regular and special meetings, concluding that the plain language of the committee exception applies only to regular meetings and not special meetings. Although the City argued that the Appellate Court's ruling would lead to absurd results by leading to different public participation rules for special and regular meetings, the Appellate Court was not convinced of such an outcome. The Appellate Court pointed to other areas where the Legislature made distinctions between regular and special meetings, i.e, the notice requirements are different—72 hours for regular meetings, 24 hours for special meetings and the scope of permissible public comment is different—“any item of interest to the public ... within the subject matter jurisdiction of the legislative body” for regular meetings, compared to only those items “described in the notice” for special meetings.[3]

Ultimately the Appellate Court concluded that there is a committee exception for only regular meetings, and no committee exception for special meetings and that it was the province of the Legislature, and not the Court, to bring them into harmony, if necessary.

[1] *Preven v. City of Los Angeles*, Court of Appeal, Second District, February 22, 2019, B287559 (2019 WL 1012134)

[2] Government Code section 54954.3 (a) reads in its entirety as follows: “(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee’s consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been

described in the notice for the meeting before or during consideration of that item.”

[3] Government Code sections 54954.2; 54956(a);54954.3(a).